Supreme Court, U.S.
FILED
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No.

IN THE

Supreme Court of the United States

EDUARDO A. CORREDOR
Petitioner

vs.

STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES
Respondent

On Petition for Writ of Certiorari to the
District Court of Appeal of Florida, Fifth District

PETITION FOR WRIT OF CERTIORARI

Eduardo A. Corredor
P.O. Box 1451
Kennesaw, GA 30144
(770) 425-9654
Petitioner

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QUESTIONS PRESENTED

(1). Whether the Statute that requires a method of turning right at an intersection in the State of Florida, consistent with the Fourth and Fourteenth Amendments of the United States Constitution, to allow police to impose a violation of such statute upon a pretextual stop undertaken by officers who observed a person physically located in an outside lane while making a lawful right turn. Is the interpretation of such statutory languages considered articulate enough to meet the essential requirements of the strict language of the statute "as close as practicable to the right hand curb or edge of the roadway" where no reasonable officer in those circumstances would have made such a stop or whether such stop was permissible as long as it could have been made because of an traffic violation.

(2). Whether the statute of suspension of license; Right to review in the State of Florida, consistent with the Fourth and Fourteenth Amendments upon its evidentiary and fact finding procedure suspend a person's driving privilege upon an unlawful traffic stop and arrest. At least two District Courts in the State of Florida have ruled that the evidentiary and fact-finding procedures of section. 322.2615 Suspension of license: right to review of the Florida Department of Highway Safety and Motor Vehicle "do not meet the minimum due process requirements.... "This judge has expressed based on his own observation, that the Department 's hearing officers at times have not conducted the fair, impartial review of evidence that is expected from such 'formal' hearings".". The citizens of Florida are not being afforded a prompt, fair, meaningful hearing by this statutory procedure, the procedure should be invalidated on due process grounds."

(3). Whether the Fifth District Court of Appeal for the state of Florida flaunt due process clause while sitting in an appellate capacity and strikes materially factual evidence from the record contrary to Rules of Appellate Procedures.

LIST OF NAMES OF ALL PARTIES

So the members of the court may at once determine whether they are disqualified to serve or rescue themselves from participation in the decision of this case, the following list of names of all parties is provided.

1. EDUARDO A. CORREDOR..... APPELLANT

2. STATE OF FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLE..... APPELLEE

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(I). Whether the Statute that requires a method of turning right at an intersection in the State of Florida, consistent with the Fourth and Fourteenth Amendments of the United States Constitution, to allow police to impose a violation of such statute upon a pretextual stop undertaken by officers who observed a person physically located in an outside lane while making a lawful right turn. Is the interpretation of such statutory languages considered articulate enough to meet the essential requirements of the strict language of the statute "as close as practicable to the right hand curb or edge of the roadway" where no reasonable officer in those circumstances would have made such a stop or whether such stop was permissible as long as it could have been made because of an traffic violation.

A. This traffic stop was objectively unreasonable because no reasonable or probable cause exists for any reasonable officer to affect a lawful traffic stop.

B. **This stop was illegal, as it was not based on the proper language of the statute to justify a traffic stop. Upon which a reasonable officer would have made the stop**

(II). Whether the statute of suspension of license; Right to review in the State of Florida, consistent with the Fourth and Fourteenth Amendments upon its evidentiary and fact finding procedure suspend a person's driving privilege upon an unlawful

traffic stop and arrest.. At least two District Courts in the State of Florida have ruled that the evidentiary and fact-finding procedures of section. 322.2615 Suspension of license: right to review of the Florida Department of Highway Safety and Motor Vehicle "do not meet the minimum due process requirements.... "This judge has expressed based on his own observation, that the Department's hearing officers at times have not conducted the fair, impartial review of evidence that is expected from such 'formal' hearings.". The citizens of Florida are not being afforded a prompt, fair, meaningful hearing by this statutory procedure, the procedure should be invalidated on due process grounds."

(III). Whether the Fifth District Court of Appeal for the state of Florida flaunt due process clause while sitting in an appellate capacity and strikes materially factual evidence from the record contrary to Rules of Appellate Procedures.

1. The District court committed a reversible error by holding that there was sufficient time for the appellee to file her answer Brief three months after said Brief was due and striking substantial evidence from the record therefore violating the appellate rules of court.

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IN THE SUPREME COURT OF THE UNITED STATES

EDUARDO A. CORREDOR

Petitioner

v.

Florida Department of Highway Safety and Motor Vehicle

Respondent

On Petition for Writ of Certiorari to the District Court of Appeal of Florida, Fifth District

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The petitioner, Eduardo A. Corredor, petition for a writ of certiorari to review the Florida District Court of Appeals in this case.

OPINIONS BELOW

The order of the Florida Supreme Court denied review of the Florida Fifth District Court of Appeal decision is reprinted in the Appendix at A1.

The Judgment and notice of appeal of the Florida Fifth District Court of Appeal is reprinted in the Appendix A2, A3.

The judgment of the Florida seventh judicial Circuit Court is reprinted in the Appendix A4.

The administrative order from the Florida Department of Highway Safety and Motor Vehicle is reprinted in the Appendix A5.

STATEMENT OF JURISDICTION

Notice is hereby given that Eduardo A. Corredor hereby appeals to the United States Supreme Court from the order of April 14, 2000 by the Supreme Court of Florida who entered an order denying discretionary review and affirming the Florida Fifth District Court of Appeal validating the constitutionality of Sec. 322.2615. 316.1932, 316.151(1)(a), Florida Statutes. The Florida District Courts decision was based on an administrative quasi-judicial review of a final order for Writ for Certiorari from a Circuit Court of Volusia County, Florida affirming the Department of Highway Safety and Motor vehicles administrative decision.

The order of the Florida Supreme Court denied any further motions for rehearing. Appendix A1. Appellant filed the Notice of appeal (Writ of Certiorari) in the Fifth District Court of Appeal from the Circuit Court concurrently Appendix. A2, A3, A4. This appeal is being docketed within ninety days from entry of the order denying appellant's Petition for Discretionary Review.

The Jurisdiction of this Supreme Court of the United States is invoked for Writ of Certiorari Jurisdiction under , 28 U.S.C. Sec.2101I, 28 U.S.C. Sec. 1254 (1), 1257 (2)(3) 28 U.S.C. Rules of the U.S. Supreme Court part III Jurisdiction on Writ of Certiorari. As an appeal that draws in question the validity of Florida statutes Section 322.2615, 316.1932, 316.151(1)(a) on the grounds that they are repugnant to the constitution of the United States.

CONTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend XIV, Sec.1: "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

Section 316.151 (1)(a):

Required position and method of turning at intersections. (1) The driver intending to turn at an intersection shall do so as follows:

(a) Right turn- both the approach for the right and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

Section. 322.2615 Fla. Stat. (1993):

Suspension of license; right to review. (5)(b) Such Formal review hearings shall be held before a hearing officer employed by the department, and the hearing officer shall be authorized to administer oaths, examine witnesses and take testimony, receive relevant evidence, Issue subpoenas, regulate the course and conduct of the hearing, and make a ruling on the suspension...(7) In a formal review hearing under subsection (6) or an informal review hearing under subsection (4), the hearing officer shall determine by preponderance of the evidence whether sufficient cause exist to sustain, amend or invalidate the suspension. The scope of review shall be limited to the following issues: (a) if the license was suspended for driving with an unlawful blood alcohol level in violation of s. 316.193 Fla. Stat:

1. Whether the arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in the state while under the influence of alcohol beverages or controlled substances.
2. Whether the person was placed under lawful arrest for violation of sec. 316.193 Fla. Stat
3. Whether the person had an unlawful blood alcohol level as provided in sec. 316.293 Fla. Stat.

(b) If the license was suspended for refusal to submit to a breath, blood, or urine test:

1. Whether the arresting law enforcement officer had probable cause to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances.
2. Whether the person was placed under lawful arrest for violation of sec. 316.193 Fla. Stat.
3. Whether the person refused to submit to any such test after being requested to do so by a law enforcement officer.

4. Whether the person was told that if he refused to submit to such test his privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second subsequent refusal, for a period of 18 months.
5. The failure of the officer to submit materials within 5-day period specified in this subsection and in subsection (1) shall not effect the departments ability to consider any evidence submitted at or prior to the hearing. The officer may submit a copy of the videotape of the field sobriety or the attempt to administer such test.

Section. 316.1932 Fla. Stat.
Breath, blood, and urine tests for alcohol, chemical substances, or controlled substances, implied consent; right to refuse. (1)(a) Any person who accepts the privilege extended by the laws of this state of operating a motor vehicle within this state is, by so operating such vehicle deemed to have given his or her consent to submit to an approved chemical test or physical test... if the person is lawfully arrested for any offense alleged committed while the person was driving....The test...must be incident to a lawful arrest...The person shall be told that his or her failure to submit to any lawful of his or her breath or urine, or both will result in the suspension to operate a motor vehicle for 1 year for the first refusal and 18 months for a second refusal to test.

HOW THE FEDERAL QUESTION WAS RAISED

Prior to the administrative hearing, on and off the record Petitioner through and by his attorney Mr. Dan Hallemburg raised the federal questions and the right to admit the relevant photographic evidence into the record. The Department of Highway Safety and Motor Vehicle hearing officer refused Appellant's attorney and later threaten appellant with jail additionally denying appellant the right to an attorney in subsequent hardship hearings. The appellant challenged by objecting the presumption and accurateness of the states facts, the appellant provided and attempted to provide material evidence that rebutted the presumption of the police report and invalidated the traffic stop. Appellant asserts that the unlawful application of section Sec. 322.2615, 316.1932, 316.151(1)(a) violates the fourth and fourteenth amendments. The hearing officer denied the motions and objections made by petitioner's counsel to invalidate the states suspension and erroneously concluded that the evidence was sufficient competent and substantial. At the hearing appellant moved to have the driving privilege suspension invalidated on the grounds that Sec.

322.2615, 316.1932, 316.151(1)(a), Florida Statutes violates the fourth amendment and the fourteenth amendments of the United States Constitution.

On the subsequent appeal to the Circuit Court failed in its review standard by not adopting essential requirements of the law and did not afford due process upheld the lower tribunals decision that there existed substantial competent evidence to support a lawful traffic stop. Additionally, the court concluded that appellant on video refused to submit to a breath test that such was sufficient to conclude that there was a refusal to submit to a breathalyzer examination that on videotape the officer informed the defendant what would occur in case of a refusal to petitioner's driving privilege. **The video tape does not materially exist. There is no videotape for the court to make such legal assertion.**

Appellant's attorney filed a supplemental appendix (Photographs) with the Circuit Court for review; because the lower tribunal had refused to admit the photographs into the record. Subsequently appellee filed a motion to have the supplemental appendix stricken from the record. The Circuit Court ruled on appellant's appeal and did not rule on the appellee's motion to strike. The appellee failed to get a ruling on her motion to strike and the issue became moot. The supplemental appendix became part of the record.

Appellant appealed the Circuit Court's judgment to the Florida Fifth District Court Appeal, while the District Court sat in its appellate capacity the appellee filed a motion to strike supplemental appendix for the second time in a different forum on a moot issue coupled with a motion to allow the filing of an answer brief which was two and one-half months late. Previously the appelle filed a motion with this District Court asserting that she would not be filing an answer brief. Concurrently to the Appellee's motion by order of the court that Appelle did not need to file an answer brief. The District Court granted both motions, **in violation of the Florida Rules of Appellate Procedures.**

The District Court failed to apply the essential requirements of the law and afford due process. In Conahan v. DHSMV, 619 So. 2d 988 (Fla. App 5 Dist 1993. **This Fifth District Court of Appeal and another District Court of Appeal for the State of Florida have ruled and affirmed that at least since 1993 the Florida Department of Highway Safety and Motor Vehicle (hereafter DHSMV) has failed to meet the minimum due process requirements in the evidentiary fact-finding procedures Unfortunately the courts in the State of Florida have become complacent with the DHSMV violation of the citizens constitutional guarantees to due process for a period of more than seven years.**

Subsequently, Appellant filed a Petition for Discretionary review in the Supreme Court of Florida on the grounds that the Fifth District's decision lack the application of the essential requirements of the law and due process by refusing to consider Section Sec. 322.2615, 316.1932, 316.151(1)(a), Florida Statutes invalid, the decision expressly construed and burden provisions of the Federal Constitution. The order of the Supreme Court of Florida in denying review validates the Fifth District's judgment, which withdraws the fourth and fourteenth Amendments protection formerly afforded to the citizens of Florida during traffic stops and subsequent arrests and a fair impartial license suspension evidentiary fact-finding procedures. This drastic precedent is not subject to further review by any Florida Court.

STANDARD OF REVIEW

Appellant filed a writ of Certiorari after a formal review hearing of administrative action under sec. 322.31, 322.2615. Florida Statute (1993), Petition for Cert. Review was filed within 30 days under Fla. R. App. P. 9.100 I, Fla. R. App. P. 9.030 I(1)I.

Appellate review is limited to the City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982). The circuit court is governed by a three-part standards of review: (1) Whether procedural due process has been accorded. (2) Whether the essential requirements of the law have been observed; and (3) Whether the administrative findings and judgments are supported by competent substantial evidence.

Additionally, appeals from final agency action are applicable to appeals arising out of the quasi-judicial process of final administrative actions. The hearing officer's determination arising out of rules challenged by proceedings is entitled to adhere to the three standards whereas the circuit court has the same discretion and must rule on the "competent substantial evidence test." Since the outcome of the rule challenge is based on the process of considering disputed evidence, it is one of the standards by which the final decision must be measured, whether the decision is supported by competent substantial evidence. The circuit court denied Certiorari Review.

Mr. Corredor subsequently filed notice of appeal before the Fifth District Court of Appeal for the State of Florida on a Writ for Common Law Certiorari. "The Jurisdiction of the district court may be to review final orders of circuit court's actions in their review capacity" City of Deerfield Beach v Vaillant , 419 So.2d 624 (Fla. 1982).

The standard of review in common law certiorari proceedings for district court of appeal are as follows; "when it reviews the circuit court's

order under Fla. R. App. P. 9.030 (b)(2)(B).... has only two discrete components." City of Deerfield Beach v. Vaillant, 419 So 2d 624 (Fla. 1982); Education Dev. Ctr., Inc. v City of West Palm Beach Zoning Bd. Of Appeals, 541 So 2d 106, 108 (Fla. 1989).

1. Whether procedural due process has been accorded;
2. Whether the essential requirements of the law were observed: and whether the circuit court applied the correct law.

Discretionary Jurisdiction was filed to the Florida Supreme Court under section 9.030(a)(2)(A)(i)(ii)(iv), (a)(2)(B)(i)(ii). Article V, Sec. 3(b), Florida Constitution From the District Courts judgment. The Supreme court for the State of Florida Denied Discretionary Review.

The Supreme Court of the United States may invoke Writ of Certiorari Jurisdiction under, 28 U.S.C. Sec.2101I, 28 U.S.C. Sec. 1254 (1), 1257 (2)(3) 28 U.S.C. Rules of the U.S. Supreme Court part III Jurisdiction on Writ of Certiorari.

REASON FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT REVIEW IN THIS CASE TO RESOLVE THE VARIOUS FLORIDA DISTRICT COURT OF APPEAL CONCERNS OVER THE DEPARTMENT OF MOTOR VEHICLES EVIDENTIARY FACT-FINDING PROCESS LACKS THE MINIMUM DUE PROCESS REQUIREMENTS DURING LICENSE SUSPENSION HEARINGS AND EVALUATE THE PROPER TEST FOR PRETEXTUAL TRAFFIC STOPS UNDER THE FOURTH AMENDMENT

The (DHSMV) hearing officer in the lower tribunal abused the standard of review. The Circuit Court in its reviewing capacity of the DHSMV administrative hearing failed to apply a justly and reasonable standard upon reviewing the DHSMV decision whether the hearing officer's decision was based on competent substantial evidence in order to support a lawful traffic stop. The correct decision by any Circuit Court should be based and governed by the precedent standard of review whether due process is afforded whether there exists competent substantial evidence supported by founded factual facts of evidence in order to apply the correct law for a fair and impartial ruling. In the case at bar the hearing officer relied on police statements that appellant made a "wide turn onto parking lanes" that do not exist and that petitioner drove at "a high rate of speed" while the Police Officer stated "def was too far ahead to pace" for speed. The hearing officer concluded that these observations from the police officer had an intermediate compulsory disposition without

probable cause but with reasonable suspicion and were enough to initiate a traffic stop. In Conahan v. DHSMV, 619 So. 2d 988 (Fla. App 5 Dist 1993. This Fifth District Court Appeal and another District Court of Appeal for the State of Florida have ruled and affirmed that at least since 1993 the Florida Department of Highway Safety and Motor Vehicle (hereafter DHSMV) has failed to meet the minimum due process requirements in the evidentiary fact-finding procedures. Unfortunately the courts in the State of Florida have become complacent with the DHSMV violation of the citizens constitutional guarantees to due process.

A pretextual stop occurs when the police use a legal justification to make a stop in order to investigate a person for unrelated serious crime for which they do not have the reasonable suspicion to support a stop. United States v. Guzman, 864 F.2d 1512,1515 (10th Cir. 1988). " the classic example, presented in this case, occurs when an officer stops a driver for a minor or no traffic violation in order to investigate a hunch that a driver is engaged in illegal activity." U.S. Supreme court has declared that a traffic stop must have the essential requirements of the law , a reasonable suspicion supported by founded factual facts, probable cause for the stop that under such circumstances a reasonable officer would have made the stop. Whren v. United States, 517 U.S.___, 116 S. Ct. 1789, 135 L. Ed. 89, 95 (1996); State v. Jones, 483 So. 2d 433, 435 (Fla. 1986). In Whren the United States Supreme Court held police must have probable cause a traffic infraction has been committed in order to initiate a traffic stop for the alleged traffic infraction. Whren 135 L.Ed.2d at 101. When an officer stops a driver for the alleged violation of a statute, but the record indicates that the driver did not violate the statute, the traffic stop is unlawful. State v. Wolcoff, 514 so. 2d. 394 (Fla. 4th DCA 1987).

STATEMENT OF THE CASE

The case arose because of the sight of a Hispanic male in a late model Honda Accord was temporarily stop at a hotel drive way ready to exit onto Ridgewood Avenue while a Daytona Beach Police Officer Bruckner was driving on Ridgewood passing the Hotel driveway heading northbound he spotted petitioner and slowed his vehicle to stare uncomfortably at Petitioner for some time, turned off his head lights and continued to slow down. Once Bruckner had passed petitioner exited the hotel driveway he drove 50 feet to make a U-turn at Ridwood and Connecticut to travel south bound on Ridgewood in the opposite direction of the Officer Bruckner who was northbound. The Police officer stated that he became suspicious of Petitioner's driving ability upon observing petitioner make a wide U-turn at the intersection of Ridgewood Avenue

and Connecticut St., causing petitioner to travel over parking lanes on the west side southbound lane. Officer Bruckner with reasonable suspicion decided to investigate the petitioner's erratic driving ability.

The record shows by photographic evidence that the **parking lanes** that Bruckner makes reference too **do not exist** on the west side southbound lane at the intersection of Ridgewood Ave. and Connecticut St. and certainly a wide turn can not be made into something that does not exist. There has to be a founded suspicion of criminal activity in order to have a valid traffic stop to investigate a persons driving ability. The record shows no such facts. While the Police Officer drove for an additional one-third of a mile northbound on Ridgewood after passing the hotel driveway the officer had to negotiate a U-turn and drive back another one-third of a mile in order to investigate. From that distance the officer allegedly saw the Honda Accord commit two more minor traffic violations before he stopped it.

Officer Bruckner tried to characterize petitioners speed as unlawful the officer stated that Mr. Corredor was "to far ahead to conduct pacing" for speed. Since the officer could not estimate the speed Petitioner was going he improvised by narrating the speed in which he was traveling in order to catch up to Petitioner who was at least three quarters of a mile ahead about to make his right turn from Ridgewood Ave. onto International Speedway to head westbound. Again the officer must have observed some sort of abnormal or erratic driving tendency based on founded factual suspicion of criminal activity. There was none. There has to exist an observed and found suspicion of criminal activity to effect a valid traffic stop. Mr. Hallemburg attorney for appellant objected and argued before the hearing officer about this misleading statement.(Aplt. App. At 49,50)

Next, the Petitioner reached International Speedway and made a lawful right turn. The record shows that Mr. Corredor made a lawful right turn and followed the rules of making a right turn as required by the improper turn statute.

The Officer stopped Mr. Corredor and alleged that the right turn Petitioner made was from "outside lane and at the top bar suddenly right turn wrong lane". The statement is ambiguous in nature and does not follow the language of the statute that governs the right turn (improper turn statute). It may be argued that the alleged facts of Buckner's statement do not apply to the improper turn statute. Absent are reasonable suspicion and probable cause. There was no founded suspicion of criminal activity observed by the officer. Even if this statement was true "The outside lane, suddenly right turn wrong lane" it does not meet the test of the statute.

Next, absent from the record is any evidence that Petitioner was stopped because the officer was concerned about his health or if he was

tired, having mechanical problems or whether the officer had probable cause to believe that the Petitioner was driving or in actual control of a motor vehicle in the state of Florida while under the influence of alcoholic beverages or controlled substances. There is no evidence that the officer knew Mr. Corredor was under the influence as alleged.

The arrest was the fruit of an illegal stop. Mr. Corredor was stop and the officer alleged that Petitioner had an odor of alcohol in his breath and that his eyes were bloodshot. The statement was a surprise to the Petitioner because he had less than one beer 5 hours before the stop while visiting a friend's house that previous evening.

Petitioner arrived at his friend's house at 9 o'clock and the traffic stop occurred at 3 a.m. in the morning. Mr. Marandino, a witness, testified that Mr. Corredor had been at his house and that he had offered Mr. Corredor one beer and watched a couple of movies with him and that Mr. Corredor did not consume anymore alcoholic beverages the rest of the evening and left his home 5 hours later at or around 2 a. m. that morning. After the arrest the police alleged that petitioner refused to submit to take a breathalyzer that the evidence was on videotape, curiously the alleged video tape was never seen by anyone or ever materialized because it does not exist. This petitioner never affirmatively refused to take a breathalyzer test.

ARGUMENT

I.

THE STATUTE WHICH IMPOSES CIVIL AND CRIMINAL PENALTIES FOR MAKING A RIGHT TURN AT AN INTERSECTION UPON A PRETEXTUAL STOP UNDERTAKING BY OFFICERS WHO OBSERVED A PERSON FROM AN OUTSIDE LANE WHILE MAKING A RIGHT TURN WERE NO REASONABLE OFFICER IN THOSE CIRCUMSTANCES WOULD HAVE MADE SUCH A STOP OR WHETHER SUCH A STOP WAS PERMISSIBLE AS LONG AS IT COULD HAVE BEEN MADE OF AN ACTUAL TRAFFIC VIOLATION TO AFFORD FOURTH AMENDMENT GUARANTIES

WHREN V. UNITED STATES, 135 L.ED. 2D 89, s. Ct. 1769, 1772, 96 C.D.O.S. 4123, daily journal D.A.R. 6635 (U.S. 1996), citing, DELAWARE V. PROUSE, 440 U.S. 648, 653, 53 L.ED.2D. 660, 99 S.Ct. 1391 (1979) CROOKS V. STATE OF FLORIDA, 710 So 2d. 1041 (Fla. Stat 1998) **MANDATES REVERSAL.**

1. This case is indistinguishable in the critical areas of the strict construction guidelines of the language by the statute from Crooks v. State, Whren v. United States.

This Traffic stop was objectively unreasonable because no Reasonable or probable cause exists for any reasonable officer to affect a lawful traffic stop.

As in Whren v. United States, 135 L. Ed.2d. 89, 116 S. Ct. 1769, 96 C.D.O.S. 4123, 96 Daily Journal D.A. R. 6635 (U. S. 1996) The police observed a vehicle in a high crime area and intended to follow based on no reasonable suspicion and attempted to attach probable cause upon observing vehicle make a right turn without using his right blinker and speed away at an unreasonable speed in order to affect a traffic stop.

As in Crooks v. State, 710, So. 2d. 1041 (Fla. Stat. 1998) police followed a car and noticed the car's wheel's drove over right-hand line of the road but absent was how far he had gone over in order to conclude whether he had failed to maintain a single lane as nearly as practicable or entirely within a single lane. The Court said this was not enough articulate application of the language in the statute to establish that he was not within his lane in order to establish a lawful traffic stop. And one of the reasons that were so is because there was no evidence presented that Mr. Crooks was outside his practicable lane.

Equally here the fourth and fourteenth amendments cannot tolerate state impose restrictions to freedom of life, liberty, property. It goes without saying that the majority of arrest for alcohol related operating offenses occur as the result of a traffic stop. The stop will occur as the result of an articulate founded fact of observation that a traffic violation has occurred such as failing to stop, or more commonly speeding. On occasion a stop would occur as the result of a generalized hunch or suspicion on the part of the officer that "something is Wrong." Such is unconstitutional based on Terry v Ohio 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d. 889 (1968); Whren v. United States, 517 U.S.___, 116 S. Ct. 1789, 135 L. Ed. 89, 95 (1996).

While an observed violation must meet and stand the scrutiny of the need for sufficient competent founded factual fact of articulate observation, the guiding foundation is based on the observation and compliance of statutory strict language by the officer. The significance of the constitutional construction of the statutes language by the legislators becomes a steering force of whether the application of such rule under any circumstance affords constitutional safety standards. The application by an observer must comply with the strict guidelines of the law (lawful or unlawful). Stopping an automobile and detaining its occupants constitutes a seizure within the meaning of the Fourth and Fourteenth amendments to

the United States Constitution. E.g. Whren v. United States, 517 U.S.___, 116 S. Ct. 1789, 135 L. Ed. 89, 95 (1996); State v. Jones, 483 So. 2d 433, 435 (Fla. 1986). In Whren the United States Supreme Court held police must have probable cause a traffic infraction has been committed in order to initiate a traffic stop for the alleged traffic infraction. Whren 135 L.Ed.2d at 101. When an officer stops a driver for the alleged violation of a statute, but the record indicates that the driver did not violate the statute, the traffic stop is unlawful. State v. Wolcoff, 514 so. 2d. 394 (Fla. 4th DCA 1987).

Whren has been adopted by some of the Florida courts as required by Article One, Sec. Twelve of the Florida Constitution. State v. Holland, 22 Fla. L. Weekly S387 (Fla. July 3, 1997). The Florida Supreme Court in Holland Held: "When applying the objective test [of Whren], generally the only determination to be made is whether probable cause existed for the stop in question." Holland at S387. "[I]t is essential that there be an objective standard in which to justify the stop of a motorist because, absent an objective standard, there would be no protection against unreasonable searches and seizures." State v. Garcia, 22 Fla. L. Weekly D1801 (Fla. 5th DCA July 25, 1997; see Delaware v. Prouse, 440 U.S. 648, 99 S. Ct. 1391, 59 L.Ed 2d. 660 (1979) United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d. 1116 (1976). Probable cause exists where police have knowledge of facts and circumstances sufficient to cause a person of reasonable caution to believe that the suspect was violating the law. See e.g. Jackson v. State, 456 So. 2d. 916(Fla. 1st DCA. 1984). An inchoate and unparticularized suspicion or mere "hunch" is not adequate to justify a traffic stop under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d. 889 (1968). The founded suspicion must have some factual foundation in the circumstances observed by the officer when those circumstances are interpreted in the light of the officer's knowledge. Peabody v. State, 556 So. 2d 826 (Fla. 2d DCA 1990).

The Petitioner did not violate Florida Statute section 316.151 (1)(a) and therefore the traffic stop cannot be upheld as lawful on that basis. That section provides as follows:

> (1)The driver of a vehicle intending to turn at an intersection shall do so as follows:
> (2) Right Turn- Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

As in **WHREN V. UNITED STATES 135 L.ED. 2D 89, s. Ct. 1769, 1772, 96 C.D.O.S. 4123, daily journal D.A.R. 6635 (U.S. 1996),** Mr. Whren was at a location were he was observed to be in a parked car and was identified as suspect by the police without reasonable suspicion and

followed to a location were Mr. Whren made a right turn without using his blinker and drove at an unpredictable high speed the police asserted that there was reasonable suspicion of a traffic violation to affect a lawful traffic stop.

The analogy of Whren with the current case is very similar in nature because the petitioner in this case was observed by the Daytona police about to exit a hotel driveway and drive fifty feet to make a U-turn, the officer stated that petitioner drove over "parking lane" that do not physically exist in order to attach reasonable suspicion the officer further observed appellant drive at a high rate of speed but the officer stated "def was to far ahead for pacing" speed, thereafter petitioner was observed at the top bar suddenly make a right turn from outside lane in violation of the improper turn statute that such was probable cause to initiate a traffic stop.

A predatory pretextual stop occurs when the police use a legal justification to make a stop in order to investigate a person for an unrelated serious violation for which they do not have the reasonable suspicion to support the stop. United States v. Guzman, 864 F.2d 1512, 1515 (10th Circuit 1988). "The classic example, presented in this case, occurs when an officer stops a driver for a minor traffic violation in order to investigate a hunch that the driver is engaged in illegal activity." Id.

Pretextual stops are permissible under the Fourth Amendment as long as they objectively justified while the Daytona police did not have objective justification they just made it up as the events developed: "[T] he fact that the officer does not invalidate the action taken, as long as the circumstances, viewed objectively, justify the action." Scott v. United States, 436 U.S. 134, 138 (1978) (emphasis supplied). With the addition of Whren v. United States, the court now holds that pretextual traffic stop is valid so long as an officer legally could have stopped the suspect in question because of a suspected traffic violation. See United States v. Johnson, 1995 U. S. App. Lexis 22658 (3d Cir. Aug 16, 1995); United States v. Ferguson, 8 F. 3d 385, 389-91 (6th Cir. 1993) cert. Denied, State v. Lopez, 873 P. 2d 1127 (Utah 1994):

Some Florida courts have held, however, that a pretextual stop is objectively justified only if, under the same circumstances, a reasonable officer would have made the stop in the absence of suspicious other illegal activity. Sec. 316.151 (1)(a), Fla. Stat. There must be objective evidence that the Defendant violated a traffic law in order for the stop to be lawful. Hollad, Garcia. The Petitioner was not driving in such a manner that would have given the officer a well founded suspicion the defendant was committing a crime. Allowing the police to make unlimited stops based upon the faintest suspicion would open the door to serious constitutional violations. Kehoe at 1097. All evidence gathered as a result of the

unlawful stop and detention is governed be the doctrine of the fruit from a poisonous tree and must be disregarded.

More than half of the States of this union have enacted statutes for the purpose of defining the proper manner in which to make a right turn at an intersection and without confusion of how the strict statutory language applies to the rule of law. These states Texas, California, Georgia. Just to name a few have enacted the same uniform language as that of the State of Florida's "Right turn statute. Both the approach for a right turn shall be made as closes as practicable to the right-hand curb or edge of the roadway."

The Federal Courts have acknowledge that Petitioner's raise legitimate concerns regarding police conduct" but have concluded that the requirement that the police have legitimate probable cause of a traffic violation or reasonable suspicion of unlawful conduct before affecting a traffic stop properly "restrain[s] police behavior." Whren, 53 F.3d at 376 this protection is illusory. As a practical matter, the test applied an the majority of Federal Courts subjects motorist driving in those jurisdictions "to unfettered governmental intrusion every time [they] ente[r] an automobile." Delaware v. Prousse, 440 U. S. 648, 663 (1979.

The essential purpose of the proscription in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents, in order to '"safeguard the privacy and security of individuals against arbitrary invasion...." Prouse, 440 U.S. at 653-54.

In State v. Arroyo, 796 P. 2d 684 688 (Utah 1990) noting trooper's admission that "[a] s a result [of] training at [a] seminar,....whenever he observed an Hispanic individual driving a vehicle he wanted to stop that vehicle" and that "once he stop an Hispanic driver 80% of the time he requested permission to search the vehicle."). It is virtually impossible to operate a vehicle without committing some minor breach of the traffic code, allowing false accounts and vague statements to approximate traffic violations to automatically justify any traffic stop is one more step removed from the completely discretionary permit checks of the type invalidated in Prouse and Whren.

Before Prouse officers were free to single people for any improper criteria and stop them on the spot. The "could have" test seems to be alive and doing well in Florida in contradiction with Whren such test allows officers to single out the very same motorist on the same improper criteria and follow them without cause until the officer catch them in violation of some near or an actual violation of some subsection of the traffic code no matter how minor or obscure, nonexistent infraction—for which no reasonable officer in those circumstances would effect a stop.

> "[G]iven the pervasiveness of such minor" or fabricated "offenses and the ease with which law enforcement agents may uncover them in the conduct of virtually everyone, [the requirement of a traffic violation] hardly matter's for... there exists a power that places the liberty of every man in the hands of every petty officer, precisely the kind of arbitrary authority which gave rise to the Fourth Amendment."

Guzman, 864 F. 2d at 1516 (quoting 1 W. LaFave, Search and Seizure Sec. 1.4 (e) at 95 (2d ed. 1987), quoting 2 L. Wroth & H. Zobel, Legal papers of John Adams 141-42 (1965).

This case at hand provides a window of opportunity to continue the abuse on the citizens of the State of Florida. The Prouse, and the Whren 53 F. 3d at 376 indicated that if the police was allowed to use the "could have" Fourth Amendment standard of the past, an officer could stop any car any time for any reason, on any improper basis, simply by waiting for the driver to change the radio station, be physically present, turn to speak to a passenger, read a roadside billboard. With traffic regulations this subjective and nit-picking on the books, the probable cause/ reasonable suspicion standards alone are ineffective to check police abuse.

Unfortunate for this appellant the traffic stop led to the investigation of a much serious violation of DUI and subsequent arrest and charge for violation of the DUI statute. The appellant's trial was held in Daytona and ended in an **ācquittal** in favor of the defendant. The trial issues were under the same founded factual facts and circumstances as the ones reviewed at the Department of Highway Safety and Motor Vehicle except for the testimony of the police officer's who were not present at the administrative license suspension hearing but defendant's witnesses were present at both forums.

During the DUI trial in Daytona the officers could not explain why the parking lanes did not exist at the location where the appellant made his U-turn, additionally that the officer's were to far behind to determine if the petitioner was speeding or not. Further, the officers could not explain if being in an outside lane while making a right turn was sufficient enough to violate a person for a traffic infraction during a right turn at an intersection and whether any reasonable police officer given the same set of circumstances would have considered such to be sufficient enough to determine whether appellant was not as practicable to the right curb or edge of the roadway or made a wide turn from the outside lane at the intersection to affect a lawful traffic stop. The jury found the police officers' testimony to be less credible when the officers could not account

for the missing videotape allegedly showing the defendant refusing to submit to a breath test.

At minimum in Whren v. United States the police observed him making a right turn without using a right turn signal in contrast with this case the Appellant merely happen to be present in a respectable area of the city driving home and as a result had his Driving Privileges suspended based on the abuse of the law by the police and the lack of the Florida Department of Highway safety and Motor Vehicle to afford due process during administrative evidentiary fact-finding procedures.

The DHSMV knew or should have known that under the circumstances the officers did not have the reasonable suspicion or probable cause to affect a lawful traffic stop that a pretextual action by objectively, justified [the officer's] action." Scott 436 U.S. at 138. where, under the circumstances, no reasonable officer would have taken a particular action, that action is not "objectively justified" under the Scott standard. "The emphasis on following standard procedures accords with Scott. When standard practice practices...are followed, the police are acting in a fashion that is reasonable, objectively viewed, even if they have an ulterior motive. Here the police were clearly **not** following standards and procedures ... their deviation from their usual practice without just cause made their conduct arbitrary.

This stop was illegal, as it was not based on the proper language of the statute to justify a traffic stop. Upon which a reasonable officer would have made the stop

As in Crooks v. State 710 at 1041 the unfortunate victim of an unlawful traffic stop shows how the court interprets the articulate and strict language of the statute failure to maintain a single lane.

When the Florida Court decided Crook's the general consent within the States Courts as defined by the courts opinion in Crook's found that there is a necessity to follow the articulate and strict language of the statute that such was essential to the correct application of the language and afford due process. The other States in the United States have without faltering continue to apply the require strict standards of the language and the essential requirements of the law in Right turn situations whereas the State of Florida burdens the constitutional requirements with deviations from the essential requirements of the law by currently depriving its citizen of the fourth and fourteenth amendments of the constitution upon a person making a right hand-turn anywhere within the States boundaries.

Please note that the court and the hearing officer deviated from the correct law and ignored the improper turn statute 316.151 (1)(a) in order to

deprive petitioner of due process Crooks v. State 710 So.2d. 1041(Fla. Stat 1998) (Aplt. Brief Index 3, 4,5) the fact that case law and departmental regulatory matter contradicts the officer's vague statements. The courts in Florida have held that any discrepancies or inconsistencies in the written document on material issues must be explained by testimony, see Hall v. State, 4 Fla. L. Weekly Supp. 208 (Fla. 18th Jud. Cir. July, 1996). The police officer never showed up to clarify what he meant to say. The hearing officer made findings of fact based not on what the officer wrote but instead on what the hearing officer believed the officer meant. Interestingly, the hearing officer made no finding of fact as to which lane Petitioner made his turn. The hearing officer's finding that Petitioner turned from the wrong lane is based entirely on conjecture and not on facts presented.(Aplt. App. At 15, 16)

Lets look at Crooks v. State 710 at 1041 this case shows how the court interprets the failure to maintain a single lane. Officer Bruckner's report does not indicate how far from the right hand curb Petitioner made his right turn. The analogy of the cases is similar because Section 316.089(1) in Crooks is parallel to 316.151(a) in the area of the required conduct "as close as practicable." Consequently, the court held that because the driver crossed over the right hand lane is insufficient to support the lawfulness of the traffic stop.

One of the reasons that was so is because there was no evidence presented that Mr. Crooks was outside his practicable lane in other words, just on the bare facts the officer saw him go over the line and absent was any evidence as to how far he went over the line. The court said this was not enough to establish that he was not, as nearly as practicable entirely within his lane. The statements made by the Officer do not meet the burden required by the improper turn statute.

The fact that the hearing officer failed to address the factual issue "outside lane" and use "wrong lane" to find culpability without the benefit of the factual contradiction "outside lane." The department had to make some kind of conclusion thereby omitting the fact outside lane. It became clear to them that the easy way out was to use the officer's statement "wrong lane" and use this statement which is a materially inconsistent conclusion of law, that from whichever lane he was in it was the wrong lane. Therefore, he violated the improper turn statute. (Aplt App.at 15,16).

Further, the department showed its boldness by asserting in a petition that Appellant was in the **left lane** when he made the right turn. There was never any testimony that Petitioner was in the left lane. This was a frivolous statement made by the department in order to assert the hearing officers findings. (Aplt. App. At 88)

The officer's allegations are materially inconsistent with his conclusion that Petitioner made an improper right hand turn while in an outside lane. Let's try to visualize what the officer meant. He stated on one hand that Petitioner made the turn from the wrong lane but when you say O.K., how did he do that he simply says he was in the outside lane when he made his right hand turn well, what is an outside lane. What did the officer mean by outside lane? If the officer meant that the outside lane is the lane closest to the curb then petitioner did not violate the improper turn statute. (Aplt. App. At 58) Again, The Officer had an opportunity to clarify what he meant to say but did not do so.

The following cases might shed some light to this reasonable argument and these assert; that the law is pretty clear about what constitutes specific articulate facts that must give rise to a reasonable inference that the Petitioner is involved in a traffic violation, and the court will carefully examine the facts to see what inferences are objectively reasonable. [Whren] has been adopted by Florida courts as required by Article One, Section Twelve of the Florida Constitution. State v. Holland, 22 Fla. L. Weekly S387 (Fla. July 3, 1997). The Florida Supreme Court in Holland held: "When applying the objective test [of Whren], generally the only determination to be made is whether probable cause existed for the stop in question." Holland at S387. "[I]t is essential that there be an objective standard in which to justify the stop of a motorist because, absent an objective standard, there would be no protection against unreasonable searches and seizures."

Even without considering the Petitioner's testimony the facts presented by the officer go against a lawful traffic stop but, if you consider Petitioner's testimony that he clearly approached the intersection "went into the outside lane the one with the arrow and made the turn as close as practicable to the right hand curb" than you can reach a conclusion that there was no violation of the improper turn statute. Went as follows: (Aplt. App. At 25,26, Aplt. Brief at 4).

Q. At International.

A. Right. So I turned on my blinker to get in the outside lane to make my turn as safe as possible on International.

Q. Okay. Now, that intersection at International and Ridgewood, as you are approaching International, isn't it true that there's a left-hand turn lane and then the two through lanes,--

A. Right.

Q. —and then there's a kind of a small, right-hand turn lane. Is that correct?

A. It's a little bit narrow lane and a very short lane, until it comes up to you.

Q. Okay. So as you were approaching the intersection you put your blinker on to turn right, correct?

A. Right. I merged into that lane right, right about where the arrows are on the street.

Q. Okay.

A. So there I made my turn

Q. Okay. Can you approximate about how far you were away from the actual turn when you made your move into the right-hand turn lane?

A. About fifty feet.

Missing from the evidence is any evidence that petitioner was not as close as practicable to the right-hand curb of the roadway or whether appellant made a wide right turn as in Crooks missing from the evidence is that Mr. Crooks was not as practicable out of his lane. The statute requires merely that when a person makes a right-hand turn, that he be as close as practicable to the right-hand curb or edge of the roadway. We have no evidence that petitioner was not as close as practicable to the right-hand curb. And when I say no evidence, we have no facts. We have no facts supporting the articulate and strict language of the improper turn statute. On the contrary we have testimonial evidence from the appellant which overcomes the presumption of the issues that he did not make the right-hand turn as close as practicable to the right curb: The Petitioner's statement went as follows: (Aplt. App. At 7,10, 11, 33).

Q. One more final question. I just want to go back. When you made the right-hand turn, were you as close as practicable to the right-hand curve that you could be in order to make that turn.

A. Yes, I was.

Again, the evidence that is missing from the record was the Appellant not as close as practicable to the right hand curb or made a wide turn? There are no facts to support that he wasn't, on the contrary the facts show that he was as close as practicable to the right hand curve. So it is clear that the hearing officer's findings have no foundation but just conjectures that the Appellant violated the improper turn statute. The allegations made in the Officer's report were anything but clear, as to the facts upon which the hearing officer based her conclusion that Petitioner turned from the wrong lane.(Aplt. App.15,16)

The unsubstantiated assumptions by the department that the petitioner was in the left lane are frivolous and should not be inferred by this court. Unfortunately the circuit court ruled incorrectly and committed

itself to the same finding as that of the DHSMV hearing officer by applying the wrong law.(Aplt App.at 88)

Further, the court initiated a futile attempt to define outside lane in its attempt to do so the court misquoted one of Petitioner's arguments and the fact that Petitioner alleges that the phrase ["outside lane"] is ambiguous, and that if he was in the outermost lane when he made the turn, then he was not in violation of the statute."

The circuit court's argument insinuates that there must have been another outside lane and that Petitioner was not in the correct outside lane simply there was no evidence that various outside lanes existed. What is an outside lane? The Petitioner's correct argument was "and that if he was in the outermost lane (i.e. the "Outside lane") when he made the turn as the officer alleges, then he was not in violation of the statute." The facts alleged in the arrest report are materially inconsistent. (Aplt. App. At 8,9, 110).

The Courts quote was as follows "in his arrest report, the Officer stated that the court said that the officer meant that Petitioner "was stopped at an intersection, and then turn right from the "outside lane" and that it was the ["wrong lane"]." The court made an unsupported factual assumption that the "outside lane" to which the officer referred was **not** the outermost right-hand turn lane. However, based on the plain meaning of the phrase "outside lane", it cannot be reasonably implied that Petitioner was in the "wrong" lane. When the state relies on police reports to sustain a license suspension, the report must include sufficient facts on which the officer relied to make the necessary legal conclusions. See Melen v. State, DHSMV, 1 Fla. L. Weekly Supp. 369 (Fla. 7th Jud. Cir. Case No. 92-31941-CICI) (order sustaining suspension reversed when officer's affidavit did not state officer's grounds for belief that person arrested was driving or in actual physical control of a motor vehicle, an essential element of the offense of DUI); see also Winton v. State, DHSMV, 1 Fla. L. Weekly Supp. 552 (Fla. 7th Jud. Cir. Sept. 14, 1993); Anderson v. State, DHSMV, Case No. 94-31652 CICI (Fla. 7th Jud. Cir. June 5th, 1995). In Petitioner's case, the only fact alleged to support the Officer conclusion that Petitioner made the turn from the "wrong" lane was that Petitioner made the turn from the "outside lane". This fact does not support the hearing officer's findings of fact.(Aplt. App. at 15,16)

While it can be theorized as to what the Officer in his mind meant by the phrase "outside lane", the state cannot meet its burden to establish the traffic stop was lawful based upon theoretical interpretations that effectively ignore the plain meaning of the facts alleged in the report. Any discrepancies or inconsistencies in the written documentation on material

issues must be explained by sworn testimony. See Hall v. State of Florida, DHSMV, 4 Fla. L. Weekly Supp. 208 (Fla. 18th Jud. Cir. July 9, 1996).

In Crooks v. State, 23 Fla. L. Weekly D1323, 1324 (Fla. 2d DCA May 27, 1998), there must be evidence that the driver was not as close as practicable to the right-hand curb or edge of the roadway. The record in Petitioner's case does not meet this burden. There was no evidence put forth by the State that Petitioner was not as close as practicable to the curb when he made the turn. The court deviated from section 316.151(1)(a) Fla. Stat.

In Smith v. State, 118 So.2d 792, 793 (Fla. 1st DCA 1960), complete failure to observe essential requirements of law is subject to correction by the court vested power to issue Writ of Certiorari.

II.

WHETHER THE STATUTE OF SUSPENSION OF LICENSE; RIGHT TO REVIEW IN THE STATE OF FLORIDA, CONSISTENT WITH THE FOURTH AND FOURTEENTH AMENDMENTS UPON ITS EVIDENTIARY AND FACT FINDING PROCEDURE SUSPEND A PERSON'S DRIVING PRIVILEGE UPON AN UNLAWFUL TRAFFIC STOP AND ARREST. OTHER DISTRICT COURT OF APPEALS FOR THE STATE OF FLORIDA HAVE FOUND THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLE'S EVIDENTIARY FACT-FINDING PROCEDURES DURING HEARINGS TO VIOLATE THE MINIMUM REQUIREMENTS OF THE FOURTH AND FOURTEENTH AMENDMENTS FOR AT LEAST THE PAST SEVEN YEARS.

Mathews v. Eldridge 424 U.S. 319, 335, 96 S.Ct. 893, 903, L. Ed. 2d 18 (1976). Mackey v. Montrym, 99 S.Ct 2612 (1979) Woodrow Conahan Department of Highway Safety and Motor vehicles State of Florida, 619 So. 2d. 988 (Fla. App 5 Dist. 1993) **MANDATES REVERSAL.**

1. This case is indistinguishable in the critical areas of the unconstitutional administrative action during license suspension; right to review for failure to submit, upon unlawful arrest.

A. The lower tribunal, circuit court, and district court failed in their review capacity to apply the essential requirements of the law and afford due process of law. The state lacked materially relevant evidence to suspend a

driving privilege. The Departments hearing officer refused to afford petitioner due process of law during evidentiary fact finding procedure and subsequent hardship license hearings by denying the right to an attorney.

There are specific standards that apply to the review process of administrative action, but all standards of judicial review in administrative law embody the general concept that an appellate court may only correct errors of law. The standards employed by the appellate courts as to particular types of administrative action. Perhaps the most common standard of review as in the case of license suspensions is the "competent substantial evidence" test.

It is well established that if the findings and conclusions of administrative agencies are supported by competent substantial evidence and if the record discloses no abuse of discretion and a violation of law, the appellate court will not overturn the agencies decision. Fla. Stat. sec. 120.68 (10) Legal Environmental assistance foundation Inc. V. Clark, 668 So. 2d 982 Fla. (1996); Gershanki v. Department of professional Regulation, 458 So. 2d 302 (Fla. 3d DCA 1984) the phrase Competent Substantial evidence has been defined by the Florida Supreme Court.

In De Groot v. Sheffield, 95 So.. 2d. 912 (Fla. 1957). as follows:

> We have used the term " competent substantial evidence" advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonable inferred. We have stated it to be such relevant evidence, as a reasonable mind would accept as adequate to support a conclusion. In employing the adjective "competent" to modify the word "substantial", we are aware of the familiar rule that an administrative proceedings the formalities in the introduction of testimony common to the courts are not strictly employed.

The evidentiary standard applicable in administrative proceedings to invoke a penalty is a greater standard than that which applies in other types of ad judicatory proceedings but, even so, the standard is one that applies in the lower tribunal of Administrative proceedings are governed by a higher standard of proof.. In Ferris v. Turlington, 510 So. 2d. 292 (Fla. 1987), the court held that a petition to revoke a license must be proven by clear and convincing evidence, Pick N Save Central Florida Inc. v. Department of Business Regulation, 601 So.2d. 245 (Fla. 1st DCA 1992) In reviewing an order in an ad judicatory proceeding involving the imposition of a penalty, the appellate court must, nevertheless, apply the competent substantial evidence test. In the case at hand the argument presented to the Circuit Court and the District Court of Florida was that

the agency failed to follow the standards and deprived petitioner of due process, further that the administrative process had failed in its ad judicatory mandate, there was no competent substantial evidence to support a lawful traffic stop and the lower tribunals mismanaged findings.

In contrast in Woodrow Conahan v. Department of Highway Safety and Motor Vehicles Burea of Driver Improvement, 619 So. 2d. 988 (Fla App. 5 dist 1993) At least two District Courts in the State of Florida have ruled that the evidentiary and fact finding procedures of section. 322.2615 Suspension of license: right to review of the Florida Department of Highway Safety and Motor Vehicle "do not meet the minimum due process requirements.... "This judge has expressed based on his own observation, that the Department 's hearing officers at times have not conducted the fair, impartial review of evidence that is expected from such 'formal' hearings".". The citizens of Florida are not being afforded a prompt, fair, meaningful hearing by this statutory procedure, the procedure should be invalidated on due process grounds."

In reviewing a final order of circuit court acting in its review capacity, the district court is limited to whether the circuit court afforded procedural due process and applied the correct law. Education Development center, Inc. v. City of West palm Beach Zoning Board of Appeals, 541 So. 3d. 106 (Fla. 1989). Interestingly enough the application and scope of the evidentiary fact finding process is not just limited to the departments but also to the circuit courts which must rule whether such evidentiary fact-finding procedure was lawfully applied to substantiate whether the evidence is competent in order to affirm the lower tribunals ruling and whether the issues involved in the case support the essential requirements of the law and afforded due process requirements.

The State of Florida lacks essential mechanisms to operate within the scope of the constitution and statutory requirements that the legislators intended. Mc.Danial v. Board of Public Instruction Escambia County Fla. D.C. 39 F. Supp 638 (1989).

Lets look at the case at hand it is well established that a suspension of a driver's license for statutorily defined cause implicates a property interest protected by the Due Process Clause. Mackey v. Montrym 99 S.Ct 2612 (1979), Resolution of the question of what process is due to protect against an erroneous and willful deprivation of protectible property interest requires consideration of;" first the private interest that will be affected by the official action; second the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute safeguards; and finally, the governments interests, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would

entail." Mathews v. Eldridge, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976)

The balancing test, should conclude that due process is required because the potential for irreparable personal and economic hardship was regarded as greater; the risk of error deemed more substantial as well in requiring a fair evidentiary fact finding hearing. In order to support a driver's license suspension. Mathews v. Eldridge 424 U.S. 319, 335 96 S.Ct. 893, 903, L. Ed. 2d 18 (1976). And" when prompt post deprivation review is available for correction of administrative error of due process, we have generally required no more than there exist probable cause for the arrest."

The US supreme court has always held as in Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1589, 29 L.Ed.2d 90, and Dixon v. Love, 431 U.S. 1005, 97 S. Ct. 1723, 52 L.Ed. 2d 172, made clear that a person's interest in his driver's license is "property" that a state may not take away without satisfying the requirements of the due process guarantee of the Fourteenth Amendment. And the Constitutional guarantee of procedural due process has always been understood to embody a presumptive requirement of notice and a meaningful opportunity to be heard before the state acts finally to deprive a person of his "property". Mulane v. Central Hanover Thrust Co., 339 U. S. 306, 313, 70 S.Ct. 652, 656, 94 L.Ed. 2d 865; Fuentes v. Shevin 407 U.S. 67, 82, 92 S. Ct. 1983, 1985, 32 L.Ed. 2d 556, Boddie v. Connecticut 401 U.S. 371, 378, 91 S. Ct. 780, 786, 28 L.Ed.2d 113; Bell Burson Supra 402 U.S., at 542, 91 S. Ct. at 1591; his Settled principle serves to ensure that the person threatened with the loss has an opportunity to present his side of the story to a neutral decision maker " at a time when the depravation can still be prevented Fuentes v. Shevin, supra 407 U.S. at 81-82, 92 S. Ct. at 1994. It protects not simply against the risk of an erroneous decision. "It also protects a vulnerable citizenry for the overbearing concern for efficiency . . .that may characterize praiseworthy government officials no less . . .than mediocre ones." Stanley v. Illinois, 405 U.S. 645, 656, 92 S. Ct. 1208, 1215, 31 L.Ed 2d 551. cf. Memphis Light, Gas & Water Div. V. Craft Supra, 436 U.S. at 21 n. 28, 98 S. Ct. at 1566 n 28. " The very act of dealing to what purports to be an "individuals case" without first affording the person involved protection of due process of a hearing and during a hearing offends the concept of basic fairness that underlines the U.S. Constitution.

It is well known that a states suspension of a driving privilege for refusal to take a test is obviously premised not on intoxication, but on non-cooperation with the police. Such may be a lawful reason to punish an individual. But not in all cases, specifically the case at hand the department is violating citizens constitutional guarantee's by refusing to

afford due process and Fourth Amendments requirements during evidentiary fact-finding procedures and unlawfully depriving citizens of "property" interests which are protected by the constitution. Woodrow Conahan Department of Highway Safety and Motor vehicles State of Florida, 619 So. 2d. 988 (Fla.. App 5 Dist. 1993)

The state of Florida postsuspension hearings are unconstitutional for such fail to afford due process when the state stacks the deck against its citizens upon failing to guarantee a fair and impartial hearing and the opportunity to be heard plus the right to attorney during hardship hearings of drivers' licenses. This U.S. Supreme Court has held " A state is simply not free to manipulate the fourteenth Amendment . . . to coerce a person into compliance . . . that every person is entitled to be heard before he is deprived of his property by the state.

Due process requirements of administrative hearings is that proceedings must be essentially fair. Student Alpha Guya v. School Board of Volusia County, App 5 Dist, 616 So. 2d. 1011 (1993). The Florida courts require equal protection of the law in which none shall be denied protection of laws enjoyed by others persons or classes in the same place and in like circumstances. Louis K. Leggett v. Amos, 104 Fla. 609, 141 So. 153 (1932).

In essence the District court failed to afford Procedural Due process and did not apply the essential requirements of the law upon reviewing the Circuit courts judgment. While in Certiorari being a common law writ which issues in the sound judicial discretion of the court to an inferior court not to take place of an appeal, but to cause the entire record of the inferior court to be brought up in order that it may be determined from the face thereof whether the inferior court has exceeded its jurisdiction, or has not proceeded according to the essential requirements of the law. A judgment void for lack of jurisdiction or a proceeding characterized by a complete failure to observe essential requirements of the laws subject to correction. Failure to observe the essential requirements of the law mean failure to accord Due Process of law within the contemplation of the constitution, or the commission of an error so fundamentally affects in character the judgment that this would render it void. State v. Smith, 118 So. 2d. 792 (Fla. 1st DCA 1960), Combs v. State, 436 So. 2d. 93 (Fla. 1983).

In Mathews v. Metropolitan Life Insurance Co. 89 So 2d 641 (Fla. 1956) the court said;

> The duty of a court is to apply and admit facts, admit a correct principal of law is such a fundamental and essential element of the judicial process that a litigant cannot be said to have the remedy by due course of law, Guaranteed by Section 4 of the

Declaration of Rights of our constitution, F.S.A. If the judge fails to perform that duty

When there is a failure to introduce substantial competent evidence to support assertion that this Appellant driving ability was reasonable suspicious because the petitioner made a wide u-turn onto **nonexistent** parking lanes, further, " that defendant drove at a quick rate of speed but that "Def was to far ahead to conduct pacing" for speed, additionally petitioner made a right turn from a outside lane violating the Improper turn statute while the statute's meaning and intent is based on **the proximity of the curb or as close as practicable to the curb or edge of the roadway** in order to violate a traffic law. Further the officer **did not pull petitioner over for an investigatory stop** to inquire whether he was ill or tired, **nor did the officer suspect that petitioner was in physical control of a motor vehicle while under the influence of alcohol.** Further, at the police station the officer alleged, "on video tape, Def was advised of the implied consent warning and refused to take a breath test. Def also refused to take a field sobriety test for video." The Officer's alleged video tape statement that Petitioner refused to take a breathalyzer test was used by the lower court as direct evidence in support the officer's statements. (Aplt App at 58).

The problem with that is **a videotape was never introduced into evidence or one ever existed** to support the officer's allegations that petitioner affirmatively refused to take a breathalyzer and was under the influence of alcohol.

Since every material element of the offense was not proven by preponderance of the evidence, there is no preponderating probability the burden has no been sustained? Therefore the material elements in this case have been left for conjecture, placing emphasis on irrelevant, insufficient and misleading evidence in order to adjudicate is a reversible error.

In Lee v. State, 374 So. 2d 1095 the court said: The violation here is flagrant for there is not one iota of evidence as to the defendants involvement . . . This being so she was denied fundamental due process. The U.S. Supreme Court feels that all lower courts and tribunals should take an example from them. The court said in Elkins v. United States, U. S. 206, 4 L.Ed. 2d 1969, 80 S. Ct. 1437 (1960) Courts which sit under the constitution cannot and will not be made party to lawless invasion of the constitutional rights of citizens by permitting unhindered governmental use of the fruits of such invasion.

The Florida court have become complacent with the flagrant constitutional violations committed by the Florida Department of Highway Safety and Motor vehicle during evidentiary fact-finding procedures that at least one other District court of appeal has declared the License

Suspension ;right to review Fla. Stat. 322.2615 Unconstitutional, In Conahan v. DHSMV, 619 So. 2d 988 (Fla. App 5 Dist 1993. The State of Florida is habitually been depriving its citizens constitutional guarantees for at least 7 or more years in some cases.

III.

WHETHER THE DISTRICT COURT OF APPEAL FLAUNT DUE PROCESS CLAUSE WHILE SITTING IN AN APPELLATE CAPACITY BY STRIKING MATERIALLY FACTUAL EVIDENCE FROM THE RECORD CONTRARY TO RULES OF APPELLATE PROCEDURES.

1. The District court committed a reversible error by holding that there was sufficient time for the appellee to file her answer Brief two and one-half months after said Brief was due and striking substantial evidence from the record therefore violating the appellate rules of court and appellants due process requirements.

The Florida District Court must first adhere to formulated standards of review and objectively apply whether appellant was afforded due process of law, and whether the correct law was applied. In of **Canarakis v. Canarakis, 382 So.2d 1197_App.1st Dist., Delno v. Market Street Railway Co. 124 F.2d 965,967 (9th Cir 1942),** the Supreme Court stated In reviewing the actions of a court, the question for the appellate court is whether reasonable persons informed by the experience of the judges with full knowledge of the material facts, could differ as to the action taken. In the case at bar the doctrine of reasonableness, could not be reach for the courts failed to apply the question of reasonableness in their standard of review subsequently leaving a constitutional question before this Supreme Court. The record for this case is blatantly clear and expresses the need for a correction by this U.S. Supreme Court. The decision of the lower courts for the case at bar created a precedence that allows forcible traffic stops for the intrusion of government without constitutional grounds of probable cause or reasonable suspicion Florida all citizens are fair game. The lower court decision violates of **U.S.CONST.amend IV, XIV. The record unmasks the unlawful intend of the Florida Department of Highway Safety and Motor vehicle (hereafter DHSMV) to deprive appellant of the right to due process. US CONST amend**

The photographic evidence does hurt the States case. While off and on the record the lower tribunal's hearing officer refused to allow

appellant and his attorney to introduce evidence and exercise appellant's constitutional guarantees of due process during evidentiary fact-finding procedure. The hearing officer made threats to appellant that she was going to have him thrown in jail if he insisted in having the evidence introduced for a rehearing. Hearing officer (Strickland) shouting at the top of her lungs before the hearing refused to allow counsel (Mr. Hallemburg) to represent appellant by telling him "you will not go in there and help him he knows the law." Hearing Officer Strickland enlisted another hearing officer to do the hardship hearing and to tell appellant he was not going to be allowed to have an attorney present. Legal counsel was unlawfully threatened by Strickland and was not allowed to represent appellant in the hardship hearing DHSMV hearing officer Diane Strickland capriciously violated appellants right to due process. Appellant's motions for reinstatement of driving privileges where unlawfully denied. In Woodham v.Williams, 207 So.2d 320 (1968). The constitution guaranty's the right to counsel during administrative reviews. Student Alpha Giga v. School Board of Volusia County App. 5 Dist. 616 So.2d. 1011 (1993) Due Process requirements of administrative hearings is that proceeding must be essentially fair and impartial. The Hearing officer's capricious ruling has unlawfully benefited the DHSMV. In Mc Danial v. Board of Public Instruction v. Escambia County, Fla. D.C. 39 F. Supp. 638 (1989). The Equal Protection Clause of the Fourteenth Amendment applies to acts of the administrative agency of the state. 194 So.2d 321 (1967),201 So 2d 464. Failure to conduct a fair and impartial hearing by failing to allow parties to establish their respective cases, before denying benefits, necessitated remand for a new hearing. All administrative reviews are subject to statutory regulations adopted by the Supreme Court Gator Freightways Corp. v. Mayo, 328 So.2d 444 (1976), Yamaha International Corp. v. Ehramam , App 1 Dist 318 So. 2d 196 (1975)

Appellants counsel (Mr. Hallemburg) had no other choice but to introduce the photographic evidence at the Circuit Court level. The Circuit Court admitted the supplemental appendix (photographic evidence) while entertaining appellants Writ for Certiorari. Shortly after the Supplemental Appendix (photographic evidence) was filed with the Circuit Court the appellee filed a motion to strike the Supplemental Appendix (photographic evidence), shortly thereafter the Circuit Court Denied Appellants Writ of Certiorari. The Circuit Court did not rule on appellee's motion to strike nor did Appellee file a notice of appeal concerning the issue but instead carelessly waived the right for review and did not get a ruling on its motion to strike Supplemental Appendix therefore making that issue moot. See, LeRetilley v. Harris, 354 So. 2d 1213 (Fla. App. 4 Dist. 1978) review denied 511 So. 2d 299, [failure] to secure a ruling on

an objection waives it. Newton v. South Florida Baptist Hospital, 614 So 2d 1195 (Fla. App. 2 Dist. 1993), Coffman v. Kelly, 256 So 2d 79 (Fla. App. 1 Dist 1971, Palmer v. Thomas, 284 So. 2d. 709 (Fla. App. 1 Dist. 1973). In LeRetilley v. Harris, 354 So. 2d 1213 (Fla. App. 4 Dist. 1978) "We choose to adopt the view that failure to secure ruling on an objection waives it.... Naturally if we now hold that the objection to the initial golden rule argument was not preserved, then fortiori, there can be no consideration, on the subsequent golden rule remarks not even objected to." Subsequently by operation of law and legal precedence, the photographic evidence became part of the record.

Once appellant had the opportunity to have, the case reviewed by the next forum. Appellant filed for Writ of Certiorari with the District Court of appeal, the court denied the writ. The District Court failed in its reviewing capacity by not applying the correct law and failed to afford due process of law to appellant upon reviewing the standards of the lower court. See, **Education Development Center, Inc. v. City of West Palm Beach Zoning Board of Appeal, 541 So 2d 106 (fla.1989)**. In the case at bar the main thrusting force behind the states (DHSMV) case has been the lack of emphasis and violations of the reviewing standards which have violated due process of law by depriving appellant of his civil liberties. The disregard to adhere to set standards of review by the district court has shown an unlimited preference for the appellee (DHSMV) In Justice **Pennehamp v. State of Florida, 665 CT. 1029, 328 US 331, L.Ed 1295 (1996). The judge may be influenced to placate to agency in order to secure an unfair ruling, which is a clear and present danger to justice.**

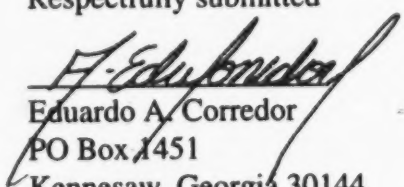
The unorthodox behavior of the District Court has permitted various prejudicial rulings against appellant. First of all appellant objected by motion to strike or dismiss or moot respondents motion to the court to accept answer brief as timely file. Such is a violation of the **Fla. R. of App P 9.210(f), 9.320.** The court denied appellants motion to strike (See Exhibit A) and granted appellee's motion to file her untimely brief coupled with a second motion to strike Supplemental appendix (photographic evidence). The District courts ruling violated **Fla. R. App. P. 9.210(f), Fla. R. App. P. 9.320**. The apellee was two and one-half months late in filing her answer brief in violation of the Florida Rules of Appellate Procedure, which reads as follows; "unless otherwise required, the answer brief shall be served 20 days after service of the initial brief. Oral argument shall not be served later than the time the last brief of that party is due." The motion to strike Supplemental Appendix (photographic evidence) is the second attempt by (DHSMV) respondent to strike a strong piece of evidence that would damage the States case (DHSMV) (Aplt App. 57 & Supp. Append. At AA1, Photo 5,6)(Brief Append. At 2,3,4,5A.) The

photographs are so damaging that this case would have been thrown out from any forum a long time ago. The photographs revealed that the police officer did not have reasonable suspicion or probable cause to initiate a lawful traffic stop. Instead, the traffic stop was unlawfully pretextual in order to invade constitutional guarantees the officer abused his discretion as an official of the law. The evidence introduced by the State lack truthful founded factual facts; the evidence was not competent enough to stand any court's application of reasonableness in their judicial review standard. In **Florida Administration Commission v. District Court of Appeal, (1st. Dist.) 351 So.2d 719 (1977)** Judicial review of final agency action must be conducted in accordance with appellate rules. All administrative reviews are subject to statutory regulations adopted by the Supreme Court. The Appellee attempted for a second time to get another bite at the apple on an issue that has no merit (moot). The supplemental appendix became part of the record to be reviewed by the District Court. In **Screidell v. Shorter, 500 So.2d 228 (Fla.App.3Dist. 1986) review denied 511 So. 2d 299,** [failure] to secure a ruling on an objection waives it. **Newton v. South Florida Baptist Hospital, 614 So 2d 1195 (Fla. App. 2 Dist. 1993), Coffman v. Kelly, 256 So 2d 79 (Fla. App. 1 Dist 1971, Palmer v. Thomas, 284 So. 2d. 709 (Fla. App. 1 Dist. 1973). In LeRetilley v. Harris, 354 So. 2d 1213 (Fla. App. 4 Dist. 1978),** The District court violated the Florida rules of appellate procedures by showing special favors to the DHSMV and unlawfully striking parts of the record. Such action by the District Court allowed a favorable decision for the appellee (DHSMV). The courts violation of appellants rights are as follows: **US CONST. Amend IV, XIV CONST amend XIV, sec. 1, FLA. CONST. Art 1, sec. 9, FLA. CONST art. 1, sec. 12, but also the Fla. R. App. P. 9.210(f), Fla. R. App. P. 9.320.**

CONCLUSION

For the foregoing reasons, petitioner respectfully request that this court grant petition for a Writ of Certiorari.

Respectfully submitted



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